IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/11/2003

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THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.17909 of 2003

M/s. Eonour Technologies Limited
No.20, Sir Theyagaraya Road
Suite 5, T.Nagar, Chennai 600 017
rep. by its Managing Director
Mr.Karthik Ramakrishnan ..... Petitioner

-Vs-

The Stock Exchange - Mumbai
P.J.Towers
Dalal Street
Mumbai - 400 001 ..... Respondent

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, as stated there in.

For Petitioner : Mr.T.K.Seshadri

For Respondents : Mr. Sriram for
M/s.A.S.Kailasam Associates
Mr.Arvind P.Datar
Senior Counsel for
M/s.Dua Associates.

:ORDER

This writ petition has been filed for the issuance of the writ of mandamus for a direction to list the shares in the Bombay Stock Exchange.
2. The brief facts are as follows:
The petitioner entered into four different agreements with M/s. System Telecom and Data Services private Limited, M/s I.Trigger Techology Private Limited, Webnet Technology Private Limited and M/s. Linex Solutions Private Limited for amalgamation. Four Valuation reports of Venkataraman and Company in respect of each of those companies were made and each of the four companies are allotted shares in the petitioner company. Notice of EGM on 30.01.2003 was issued, giving full disclosure as to the allotment of preferential shares. On 09.09.2002, requests were made under Securities Contracts (Regulation) Act for listing shares in Madhya Pradesh, Mumbai,

Ahmadabad and Madras Stock Exchanges. The petitioner company received letters approving the listing of shares of the petitioner in Madras and Ahmadabad Stock Exchanges. From SEBI also acknowledgment was received regarding the report filed. Bombay Exchange sent a letter dated 05.03.2003 enclosing a report by an independent Chartered Accountant and requested certain particulars. On 10.03.2003, the Madras High Court in Company Petition Nos.2 81 to 284 of 2002, confirmed the amalgamation of the four companies. The four companies were allowed to be dissolved without winding up. Letters were exchanged between Bombay Stock Exchange and petitioner with respect to certain particulars. On 05.05.2003, letter was sent by SEBI informing the petitioner giving approval for GDR issue. The Bombay Stock Exchange also required the Managing Director of the petitioner company to attend the Board meeting on 10.03.2003. Since no approval was granted by the Bombay Stock Exchange, an appeal was filed to Securities Appellate Tribunal against the delay in

considering and listing of the shares. The appeal papers were returned on 24.06.200 3. Therefore, the present petition has been filed for writ of mandamus.

3. In the counter affidavit filed by the Mumbai Stock Exchange, it is stated that the Stock Exchange has bye-laws, but those bye-laws are binding on its member. Regulation 118 excludes the companies whose shares are listed in the Stock Exchange. The revisional power provided under Section 123 with respect to dispute between the members. As per the bye-laws, no time limit has been fixed for consideration and listing the shares other than public issues of shares.

4. The learned counsel for the petitioner submitted that the Securities Contract Regulation Act is a complete code. Section 22(F) of the Act applies only when the appellate Tribunal passes an order; it applies only to the 'decision' or 'Order' passed by the Tribunal. The mere return of papers does not amount to an order. The bye-laws of the Stock exchange which binding only on the members of the Stock Exchange. But, the respondent relies upon the bylaws 34 and 35 and objects for listing. Inasmuch as the bye-law is not applicable to the petitioner, the contention that no time limit fixed for considering the listing of shares other than the public issues and shares is not correct. Further the amendment to the bye-laws relied upon by the respondent came into force only on 08.05.2003. But, the application for listing was made on 09.09.2002 and amalgamation was approved on 10.02.2003 . Therefore, the provisions of Clause-24 has no application. Further the argument that Section 22(A) apply only to the case of public issues is not correct; the provision will also apply to the case of preferential allotment of shares. Therefore, the Bombay Stock Exchange failed to exercise its statutory duty within the time prescribed. If the duty is not done within the prescribed period, that power cannot be exercised after the period was over. Therefore, the communication sent by the respondent that certain particulars be furnished so that it can consider and pass orders is of no effect. Hence this Court can grant the prayer in the writ petition.

5. In support of his argument, the learned counsel relied upon the

decision in Comptroller and Auditor General Vs. K.S.Jagannathan (AIR 1987 SC 537), wherein it has been held:
"There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

6. Mr.Arvind P.Datar, learned Senior counsel appearing for the respondent submitted that the writ petition is not maintainable against the respondent, as there is no part cause of action that has arisen within the jurisdiction of this Court. Mere sending of notice does not create any cause of action. In support of his argument, he relied upon a decision in State of Rajastan and Others Vs. M/s. Swaika Properties and Another (1985 (3) SCC 217) wherein the Supreme Court has held as follows:
"The mere service of notice under Section 52(2) of the Act on the respondents at their registered office within Section 52(2) of the Act on the respondents at their registered office within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action."
Therefore on the same analogy mere sending of notice from Chennai does not create jurisdiction.

7. The learned Senior counsel also contended that allotment of preferential shares in Madras does not create any cause of action to approach this Court against the respondent when the listing was not done in Bombay. Therefore, the writ petition is liable to be dismissed on the ground of want of jurisdiction. The learned Senior Counsel further submitted that the writ petition is premature. From the additional typed set of papers filed by the respondent in Page Nos.15 to 19, it is seen that SEBI has barred the writ petitioner from trading for three years. Therefore, the Bombay Stock Exchange has to verify certain facts before taking a decision whether the listing can be permitted. Further, the learned counsel submitted that the Bombay Stock Exchange wanted to know the top 10 buyers and sellers of the petitioner company. Those particulars are necessary for taking a decision on the request of the petitioner. Once the particulars are given, considering those particulars, the Bombay Stock Exchange will take a decision. It is not as if the power conferred on the Bombay Stock Exchange was refused to be exercised.

It cannot be lost sight of that the matter involves the shares worth Rs.4 Crore s. Unless the information that is needed by the respondent is furnished by the petitioner, it is not possible to list the shares in the Bombay Stock Exchange. Further the learned senior counsel submitted that Section 73 of the Companies Act is not applicable to the case of the petitioner.

8. Further the learned counsel submitted the 10 weeks time limit prescribed by the Stock Exchange Regulation Act is not applicable to preferential allotment of shares. It is not an allotment of public issue. Therefore, the time limit fixed by the Securities Contracts (Regulation) Act is not applicable to the facts of the present case. On the facts of the present case, the provision under Section 22(1)(a) is not applicable; only the provision under Section 22(1)(b) is applicable. Since it is a preferential share, Section 73 of the companies act is not applicable. Therefore, till the respondent passes an order refusing to list the shares, no cause of action arises. Therefore, the writ petition is premature and it has to be dismissed on that ground also.

9. The learned counsel further submitted as a general rule, courts do not pass an order directing to do anything. It can only direct the respondent to consider the matter which the respondent is always prepared, once the required particulars are furnished.

10. In support of his contention, he relied upon the decision in State of Uttar Pradesh and Another Vs. Raja Ram Jaiswal and Another (19 85(3) SCC 131), wherein it has been held that Court cannot be issuing a mandamus direct a statutory licencing authority to grant licence at a stage when the authority was yet to apply its mind and examine the application for licence on merits.

11. Replying to the contention made by the learned counsel for the respondent, Mr.T.K.Sheshadri, learned counsel for the petitioner submitted that when there was no objection raised for the amalgamation of the four companies, the listing of the shares of the amalgamated company cannot be refused. If shares are not listed, the entire scheme of amalgamation would fail. When the statute provides that within 10 weeks, the order shall be passed, not passing the order amounts to dereliction of duty. The communication dated 26.06.2003 is an afterthought and therefore that cannot be taken serious note of. The contention that the provisions of Section 22(A) is limited only to public issues is not correct. Inasmuch as the order has not been passed within the time prescribed, the authority cannot exercise its power any more and therefore, there is no authority which can pass the orders. Hence, this Court can issue a writ of mandamus for listing the shares in the Bombay Stock Exchange.

12. The contention of the petitioner is that as per Section 22 A(1)(b), the Stock Exchange has omitted or failed to dispose of the application for listing within the time limit of 10 weeks specified in Section 73(1A) of Companies Act, 1956. The application for permission has to be dealt with, within 15 days from the date of expiry of the specified time or within

such further time not exceeding one month as the Tribunal may on sufficient cause being shown may allow. Therefore, after the initial period of 10 weeks, the total time available for the Stock Exchange as well as for the appellate Tribunal is only 15 days + 1 month, i.e., 45 days. After 45 days, the Stock Exchange has no power to grant or refuse permission. An appeal lies to the Tribunal even when there is omission to pass an order. Therefore, after 45 days time limit, Stock Exchange cannot pass any order. Therefore, the Stock Exchange has abdicated its power. Since the appellate Tribunal has returned the papers, it is not an 'order' passed by the appellate Tribunal. Therefore, the petitioner need not approach Bombay High Court against such returns. On the basis of the part cause of action namely that the letters for listing addressed by the petitioner to the Mumbai Stock Exchange, the petitioner can approach this Court for redressel. Therefore, the writ petition is maintainable. Section 2 2(F) applies only to an 'order' or a 'decision'. It does not apply to when the papers were 'returned' - return of papers neither amounts to an order or a decision. Therefore, the writ petition is to be allowed.

13. It is true that the amalgamation of the four companies has been approved by this Court. But at the same time, when the shares are listed in Stock Exchange, the public gets the right and opportunity to deal with the shares. Considering the fact that there were some irregularities committed by a number of persons due to which large number of people lost their entire investment. The SEBI has intervened to safeguard the investors in shares and to see that the public at large do not get affected. In order to safeguard the interests of thousands and thousands of people, it is necessary for the Stock Exchange to ascertain the permissibility of the shares for trading. Therefore, there is a duty cast on the SEBI as well as the Bombay Stock Exchange to be satisfied with the marketability of the shares. Therefore, it can seek any clarification, in order to take a decision on the listing the shares. Hence, when such clarifications are sought for, it has to be clarified by any person who want to list the shares. Therefore, inasmuch as the Bombay Stock Exchange has sought for certain clarification as to the top 10 buyers and sellers of the shares, which according to Bombay Stock Exchange, is necessary to take a decision on the marketability of the shares. Therefore, the petitioner is bound to furnish those particulars. Instead of furnishing those particulars, the petitioner take a stand that it need not furnish such particulars as the amalgamation has already been approved by the Court. This argument of the petitioner does not appear to be legally sustainable.

14. The learned counsel appearing for the respondent has submitted that the respondent is ready to consider the request of the petitioner, once the particulars are furnished. On the other hand, the stand taken by the petitioner is that it need not furnish such particulars and the Bombay Stock Exchange cannot seek such particulars. Inasmuch as the Bombay Stock Exchange will be responsible to protect the interest of large number of investors who are dealing with the shares, the Stock Exchange has the public duty to satisfy itself about the marketability of the shares before permitting the listing of shares. Therefore, the Bombay Stock Exchange cannot be compelled to list the shares without arriving at decision for itself about the marketability.

15. Therefore, as rightly contended by the Senior Counsel, appearing for the respondents the writ petition is premature. The writ petitioner shall submit the required particulars; and even after that, if the Bombay Stock Exchange fails to pass an order, then the petitioner can approach the Court.

16. With respect to the question of jurisdiction, the mere act of sending notice from Chennai to list the stocks in Bombay Stock Exchange, does not create any cause of action.

17. As per the provisions of the Stock Exchange Regulation Act, the petitioner can approach the Securities Appellate Tribunal. But the Tribunal returned the papers. Even assuming that it is not an order or decision passed by the Tribunal, it is still a 'refusal' to pass an order or refusal to take decision or refusal to exercise the powers conferred on it. Therefore, that creates a cause of action and that cause of action has arisen only in Bombay. In such circumstances, the petitioner can approach only the Bombay High Court for the relief as the refusal to exercise jurisdiction is in Bombay. This Court has no jurisdiction in this particular case as there is no cause of action not even part cause of action within the jurisdiction of this Court.

18. A writ of mandamus for listing of shares cannot be issued in a matter like the case on hand which involves complicated questions of fact which can be considered only by the concerned authorities. This Court cannot decide those issues as it do not have that expertise. At the most, this court can pass an order to consider the request of the petitioner, which the respondent is prepared, provided the necessary particulars are given. In such circumstance, the writ of mandamus cannot be granted and on this ground also the writ petitioner cannot succeed.

19. In the result, the writ petition is dismissed as devoid of merits. No costs.

Index:yes
Internet:yes

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To
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